

1 would be background information, which might be helpful for
2 the record, but which is not going to really focus on the
3 key issue -- he's not going to focus directly on the key
4 issue, which is what was the licensee doing during the
5 renewal period, as to which he would testify from a
6 secondary source, that while he was there as a public
7 witness and he heard what was going on as far as the station
8 was concerned -- and to the extent that -- you know, there
9 are all kinds of ways of weighing that type of testimony,
10 but it's basically public witness, it's a public witness
11 testimony with the added -- perhaps the added characteristic
12 that this person has some additional insight into the
13 station because he had once worked there, which to me is
14 legitimate background information.

15 MR. HUTTON: I guess that's fine as long as our
16 public witnesses' testimony as to the station's programming
17 beyond the license term is also admitted; that would be
18 fine.

19 JUDGE SIPPEL: Well, to the extent that it would
20 have -- to the extent that it would have some bearing on the
21 case, yes. I mean, now, I gave the illustration. I don't
22 know how this is all going to turn out when the actual
23 deposition is taken, but I had given that as an
24 illustration.

25 If you come up with something that's a comparable

1 commons-sense approach to receiving an overall view from a
2 witness, you know, fine. I don't have any problem with
3 that. I certainly intend to apply an equal standard to both
4 sides.

5 Now, let me move over to Mr. Cole's side on this.
6 Are you interested in getting much testimony out of this
7 witness, outside of the renewal period?

8 MR. COLE: No, Your Honor. No. I believe you
9 have accurately stated what my goal is, and what my
10 intention is, and what my expectation is, and that is that
11 that particular witness, whom I have interviewed once, would
12 explain -- would describe his background, his familiarity
13 with the station in the past, and that would provide the
14 basis for his observations concerning what happened after he
15 left the station, which is to say, the license term program.

16 I would not propose to derive or rely at all in
17 renewal expectancy arguments on his -- on factual
18 information he might provide about programming prior to or
19 outside the license term as we've defined it here. It is
20 purely background to provide -- you know, any discussion of
21 his involvement at the station prior to the license term
22 would be for background purposes to establish his
23 perspective and his ability to comment intelligently on what
24 did happen during the license term.

25 JUDGE SIPPEL: All right. Now, Mr. Hutton, it

1 would seem to me that if you had a witness, a public witness
2 who was going to testify primarily for the purposes of
3 testifying as to what the station was doing during the
4 renewal period, however you led him through a series of
5 questions for background purposes that -- in terms to
6 explain who he was and how he fits in with the community, he
7 may be testifying to things that go prior to the renewal
8 period or he may testify to things that go after the renewal
9 period.

10 But if it's in the context of a background, a
11 better, in other words, getting a better vantage point of
12 the particular witness in terms of where he's -- you know,
13 where he's situated and how he might be able to observe
14 things, I don't see any problem with that as long as it
15 doesn't take up a lot of time. I would certainly permit the
16 same type of evidence from your witnesses.

17 MR. HUTTON: I understand.

18 JUDGE SIPPEL: All right. Well, it sounds as if
19 we've got at least two witnesses identified who are going to
20 have relevant evidence. Now, the other three are -- what's
21 the nature of the other three?

22 MR. COLE: Two of them are elected officials. Mr.
23 Hutton correctly points out that one of the elected
24 officials did not hold his elected position during the
25 license term, but during the license term he did hold an

1 official position, and I believe it was the district
2 attorney's office in Berks County. And he's prepared to
3 testify about his relationship and perception of the station
4 during that period of time. He has since become an elected
5 official, and he was identified as an elected official in
6 our notice because that is his current position and we
7 didn't want to fool anybody about where he was and how to
8 get in touch with him.

9 But you know, there is no secret that he was not
10 in fact -- he did not hold that elected position at the time
11 of the license term. Both he and the other elected
12 official, who has been and was consistently in his position
13 as, I believe it's registered, the clerk of courts, held
14 that position throughout the license term and he also is
15 prepared to comment on his understanding and perception of
16 the station's relationship to the community during the
17 license term.

18 JUDGE SIPPEL: And what was the third one?

19 MR. COLE: And the third one is an individual
20 at -- a staff person, an employee at a local college which
21 had a program, I guess is the best way to describe it, a
22 cooperative program in which students of the college -- and
23 this predates the license term -- assisted -- a program in
24 which the college worked with the station so that the
25 students at the college produced programming in cooperation

1 with the station. It was aired on the station, and there
2 was a lot of back and forth between the station and the
3 college prior to the license term.

4 And my understanding of his testimony is that he
5 would come in and state that that ceased at, or immediately
6 before, the beginning of the license term, that program
7 ceased, and that despite the fact that there had been
8 extensive relationships between the college and the station
9 prior to that time, during the license term the relationship
10 was virtually nonexistent.

11 JUDGE SIPPEL: Mr. Hutton?

12 MR. HUTTON: Well, that last one is clearly not
13 relevant, you know. There is no requirement that you
14 continue a particular employment program or education
15 program during any license term. And he's going to testify as
16 to what happened prior to a license term.

17 JUDGE SIPPEL: Yes, what is this person --

18 MR. COLE: He's going to testify -- Your Honor, he
19 is going to testify that there was, in fact, a relationship
20 that all of a sudden went away and completely evaporated, as
21 a result of which a local college which is a rather
22 significant aspect of the Reading community, went from being
23 at least well attended to and cooperatively involved with
24 the station, to no involvement whatsoever during the license
25 term.

1 JUDGE SIPPEL: Well, this is like -- this is the
2 loss, the loss of a broadcasting opportunity or something
3 like that?

4 MR. COLE: Sure. Well, it's a -- well, Reading
5 Broadcasting is certainly going to make the effort through
6 its public witnesses to demonstrate that it was working with
7 all elements of the community and trying desperately to put
8 as much stuff on about the local community. The fact of the
9 matter is they had a previous relationship with an
10 organization which was working cooperatively with them in a
11 variety of programming ways, and that relationship was
12 apparently cut off unilaterally by Reading Broadcasting, not
13 to be recommenced.

14 And I think that is, if nothing else, at least a
15 useful and relevant counterpoint to the showing which we
16 anticipate Reading Broadcasting will be trying to make
17 through its public witnesses.

18 JUDGE SIPPEL: Does the Bureau want to add
19 anything to this or comment on it at all?

20 MR. SHOOK: It appears that the matter that Mr.
21 Cole is referring to is relevant with respect to the
22 criteria that refer to the presence or absence of any
23 special effort at community outreach or towards providing a
24 forum for local self-expression.

25 JUDGE SIPPEL: I'm convinced. I mean, in light of

1 the nature of rebuttal testimony and the nature of public
2 witness testimony, the leeway that is granted, certainly the
3 specific standard that Mr. Shook has just cited, I'm going
4 to overrule the -- I'm going to overrule the opposition.
5 I'm going to permit those witnesses to be deposed. The only
6 question is when are they going to be deposed, and I'm going
7 to leave that -- well, go ahead, you go ahead.

8 MR. COLE: Right. If I may just address that
9 because it's -- and I am personally responsible for having -
10 - to the extent that a deadline was missed, I'm willing to
11 take personal responsibility for that. But I think we were
12 a little bit blindsided. As Your Honor may recall, when the
13 original schedule was set up for our witness notification on
14 the public witnesses, we were obligated to identify the
15 witnesses by October 29. We did that.

16 And it was then -- it was the understanding, and I
17 believe this is reflected in Your Honor's order of October
18 5, that the witnesses would be deposed at some point
19 immediately after the hearing, which at that point was
20 scheduled in December. And you indicated in a footnote
21 that, well, the witnesses would probably be deposed sometime
22 in January or early 2000, and that we would have until
23 witness -- until the admissions session to try to work out a
24 schedule on all that.

25 After that, you postponed all the hearing

1 deadlines so that the admissions session is not in December,
2 it's now in January. And we understood at that point, even
3 though Your Honor's rescheduling order did not specifically
4 address when we would have to work out the schedule for
5 depositions, we understood, or we expected, and possibly
6 foolishly so, but we assumed that that meant that our -- you
7 know, the schedule for those depositions could be undertaken
8 as late as the day before the admissions session in January.

9 But in your rescheduling order, you also indicated
10 that all subpoenas had to be filed by December 15. Well,
11 that put us in a conundrum because at that point we are
12 filing subpoenas on December 15, which theoretically specify
13 some date, because these are obviously nonparty witnesses,
14 but on the other hand, you know, we have until early January
15 in which to, you know, theoretically come up with a date.

16 And even then we're not going to be able to come
17 up with a solid date because the solid date will only
18 materialize once the hearing is done, because we're not
19 going to drop everything in the middle of the hearing and
20 run up to Reading, do some depositions, and come back down
21 and finish the hearing.

22 As I understand it, we're going to do this phase
23 of the hearing. When this phase of the hearing wraps up, we
24 then schedule at that point a mutually convenient time for
25 all the witnesses.

1 So what we did was on the date for subpoenas,
2 which was, I believe, December 15th, we sought subpoenas in
3 which we, you know, took our best guess of -- a week from
4 now is January 12th. During that -- you know, possibly we
5 could get the hearing done in a week. Who knows? And we
6 included in the deposition notice and in the hearing, or in
7 the subpoenas themselves -- noticed everybody that the
8 January 12 date, which was, again -- it was a soft date, and
9 it was expected that there would be changes and that, you
10 know, accommodations would be made. And I fully expected
11 that that would engender some conversation back and forth.
12 I did not expect that it would engender, you know, an
13 opposition in the form of a pleading, in that sense.

14 But to the extent that this is my fault, I
15 apologize to the Court and to Reading Broadcasting and the
16 Bureau, but that's -- you know, that's how it came about and
17 I think at this point we are still unable to schedule with
18 any specificity, so, you know, the problem of not having
19 worked out a schedule at this point, I think, is kind of a
20 silly argument because we can't do it as of right now.

21 We are certainly willing to accommodate and we
22 wanted to, you know, meet your subpoena deadline
23 requirement, so that's -- but that's how this came about.

24 JUDGE SIPPEL: All right. I just want to note
25 that the reason that the dates were changed is because Adams

1 filed a motion to change the dates, and I responded to that,
2 so --

3 MR. COLE: I understand that, Your Honor.

4 JUDGE SIPPEL: So, okay. Well, Mr. Hutton, do you
5 want to add anything to that?

6 Obviously, there has been oversight, slippage,
7 missed dates, but the point is, is that these depositions
8 are going to be taken before or -- and they're going to come
9 into -- well, I don't know whether they are going to come
10 into the record, but they are going to be offered as
11 evidence in this case.

12 Would you be willing to work out some kind of a
13 schedule with Mr. Cole on this?

14 MR. HUTTON: I'm happy to cooperate on the
15 schedule.

16 JUDGE SIPPEL: All right. Then I think, why don't
17 we just leave it at that? The opposition --

18 MR. HUTTON: Very good, Your Honor.

19 JUDGE SIPPEL: -- has been denied. You're going
20 to take their depositions. It's just a question of when, of
21 exactly when, and that you have to consult with Mr. Hutton
22 and he has to check his schedule --

23 MR. COLE: I understand that, Your Honor.

24 JUDGE SIPPEL: -- and do all those things.

25 MR. COLE: Thank you, Your Honor.

1 JUDGE SIPPEL: And of course, if the Bureau wants
2 to participate in those, the Bureau too.

3 Okay, by the way, on those public witnesses, the
4 transcripts are going to be -- you've got the transcriptions
5 of those depositions, correct, Mr. Hutton?

6 MR. HUTTON: I don't. I think the reporters are
7 filing them with the Secretary's office.

8 JUDGE SIPPEL: Oh, okay. All right. All right.
9 So they're not in a position to be offered.

10 MR. HUTTON: No.

11 JUDGE SIPPEL: All right. Well, that's basically
12 a housekeeping chore. You can take care of that when you're
13 prepared to do it. It shouldn't be that much longer.

14 MR. HUTTON: Okay.

15 JUDGE SIPPEL: We're keeping the record open
16 anyway for other purposes.

17 MR. HUTTON: Okay.

18 JUDGE SIPPEL: I would urge, though, I'm trying to
19 get this -- I would want to get this aspect of the case,
20 this comparative aspect of the case solidified as quickly as
21 possible because I think it's going to be helpful for
22 purposes of preparing proposed findings, and I'm not sure --
23 I haven't gotten to the point now where I'm setting dates,
24 but it would be -- it would certainly be in everybody's
25 interest, in particular, I think, counsel's interest, if you

1 focused on these findings soon after this phase was over,
2 even if you don't file them. You know, I'm going to think
3 about that very carefully and I want to come back to that,
4 because I don't want the slippage of time to undercut the
5 capacity to, you know, to recall and pull these things
6 together. That's just my observation right now.

7 Okay, there is also a request for an appeal from
8 one of my rulings. Adams filed that on December the 29th.
9 I want to get responsive pleadings from the Bureau and from
10 Reading on that before I get into that. But I'm not going
11 to impose that burden while we are in hearing. I want to
12 give it five business days' turnaround time, but I'm going
13 to do it after we complete the hearing session, or if
14 there's going to be a significant break between hearing
15 sessions, which would give you a reasonable opportunity to
16 do that.

17 MR. SHOOK: Your Honor, I have a request.

18 JUDGE SIPPEL: Yes.

19 MR. SHOOK: Or a suggestion --

20 JUDGE SIPPEL: Yes.

21 MR. SHOOK: -- with respect to this. One of the
22 matters to consider with respect to the renewal expectancy
23 is the licensee's compliance with the Act and the rules
24 during the license term. It seems to me that the matter
25 that Adams is concerned with can be addressed in questioning

1 submitted to Mr. Parker while he is testifying with respect
2 to the renewal expectancy, and that would perhaps obviate
3 the need for perhaps -- you know, having a special issue
4 with respect to this matter.

5 JUDGE SIPPEL: So if I hear what you're saying,
6 your position would be that there is relevance with respect
7 to the subject matter under that transfer of control
8 conundrum?

9 MR. SHOOK: Yes, sir.

10 JUDGE SIPPEL: That it would fit in, it would
11 dovetail in with the burden of Reading to show that they
12 complied with Commission rules and regulations during the
13 term.

14 MR. SHOOK: Yes.

15 JUDGE SIPPEL: How would you like to treat that,
16 Mr. Bechtel?

17 MR. BECHTEL: Can I pass the football again?

18 JUDGE SIPPEL: You sure can.

19 MR. COLE: Well, Your Honor, I'd like to think
20 about that for a minute. Obviously, I don't think the two
21 are necessarily mutually exclusive -- that is, I think Mr.
22 Shook is correct that some inquiry into this area is
23 appropriate under the renewal expectancy issue, under the
24 comparative aspect of the case, irrespective of a special
25 disqualifying issue.

1 And as I understand what Your Honor had just said
2 in terms of scheduling a response to our request for leave
3 to appeal, we could in fact proceed under the comparative
4 issue to the extent -- try the case under the comparative
5 issue -- to the extent that questions may be raised and
6 presented to Your Honor for evidentiary rulings, whether
7 it's Mr. Parker or whoever else on the stand, about
8 questions that involve compliance with the rules and the
9 Act. We can get into that, and possibly at that point, at
10 the close of the comparative session, we could then revisit
11 what we want to do or what should be done about the request
12 for leave to appeal.

13 Because if Mr. Shook is correct and we can get
14 into a variety of matters to our satisfaction and establish
15 a record about it, I guess it's possible we could withdraw
16 our request for leave to appeal. On the other hand, I'm
17 reluctant to do that because what Mr. Shook is suggesting,
18 as I hear it, is that we simply proceed on a comparative
19 basis and possibly ignore what we believe, what Adams
20 believes to be a disqualifying issue. And you know, I've a
21 serious reluctance to ignore disqualifying issues if they're
22 out there.

23 But what I would suggest, in light of Mr. Shook's
24 suggestion, is that we withhold any determination on this
25 until the close of the comparative aspect of the case. And

1 at that point if you -- I assume you'll then issue an order,
2 you know, barring any withdrawal of the request for leave to
3 appeal at the close of the comparative case, you would
4 either issue an order or give an indication on the record
5 when responses to our request for leave to appeal are due.
6 And at that point, you know, if we are satisfied with the
7 record as it stands and have concluded that there is no
8 reason to pursue that, we could so advise Your Honor and
9 that would obviate the need for further pleadings on that.

10 JUDGE SIPPEL: Well, if we could explore with Mr.
11 Parker the facts and circumstances with respect to the
12 activity that relates to the so-called unauthorized change
13 of control, that could very -- I would be very -- I would
14 feel very comfortable in terms of shutting that issue down
15 in terms of what I had previously ruled.

16 Of course, if something comes up in the course of
17 the hearing which, you know, I completely missed or which
18 shows that I was not being given all the relevant facts,
19 anything is up for grabs in that kind of a situation. I'm
20 not looking for that. I'm not inviting it. But that's
21 always there as a fail-safe. But right now this is a -- I'm
22 just looking at this in a very -- trying to look at it as a
23 very practical matter.

24 I mean, I've considered extensive pleadings on
25 this. I wrote a detailed analysis and gave my decision on

1 it, and now you're asking me to reconsider it, in effect,
2 for purposes of appeal. And I don't want to treat it
3 lightly, but in light of what Mr. Shook has said, this could
4 very readily become moot in terms of the procedure of the
5 case.

6 I mean, are you going to offer any opposition or
7 objections to this line of questioning on the grounds of
8 relevancy, Mr. Hutton?

9 MR. HUTTON: Well, I have trouble seeing the
10 relevancy.

11 JUDGE SIPPEL: Well, Mr. Shook put his finger
12 right on it.

13 MR. HUTTON: Well, he did except for the fact that
14 there is no prima facie showing of violation. There were
15 two transfer of control applications reviewed and approved
16 by the Commission. The Commission has never sought to
17 revisit those. And you have now analyzed the underlying
18 facts and circumstances and rendered your own decision,
19 finding that there was no violation of the Commission's
20 rules.

21 So what more do we need? It sounds like we're --
22 without a prima facie showing of a violation, why should we
23 go into an inquiry about whether there was a violation?

24 JUDGE SIPPEL: Well, now, wait just a second, wait
25 just a second. And put what I did in context. All I said

1 is -- when I issued my MO&O on this -- was to say that I
2 don't think that there is a significant enough question here
3 to warrant putting out a separate issue and gearing up all
4 the discovery and going into this thing as a -- you know, as
5 another trial matter, and that would be the transfer of
6 control.

7 Now, what Mr. Shook is talking about is an
8 entirely different thing. He's talking about complying with
9 regulations of the Commission with respect to things being
10 done at the right time and the right place and in the right
11 manner while you are licensee.

12 MR. HUTTON: Well, the only violation that I'm
13 aware of is they were late in reporting who the correct
14 directors were. The ownership was --

15 JUDGE SIPPEL: Well, that's no small matter.

16 MR. COLE: Excuse me.

17 MR. HUTTON: That's not a -- well, it's certainly
18 not a disqualifying matter.

19 JUDGE SIPPEL: Well, that's the whole point of
20 this back and forth here. I'm not trying to put something
21 in the context of all or nothing. All I'm simply trying to
22 do is to get everybody into a relevancy frame of mind so
23 that if we go down this path that Mr. Shook is suggesting
24 here, which appeals certainly to me, that we're not going to
25 spend a lot of time with objections because of relevancy.

1 Mr. Parker has to be able to come in here and tell his
2 story.

3 MR. HUTTON: That's fine with me.

4 JUDGE SIPPEL: I'm sorry. Mr. Cole?

5 MR. COLE: Your Honor, I was just -- I apologize.
6 I have nothing further.

7 JUDGE SIPPEL: All right. Then as far as I am
8 concerned, then this is settled. I'll just reserve -- I'll
9 reserve what happens with your request for an appeal. I may
10 decide to -- I may make the decision on my own without
11 getting further briefing. If I feel I need further
12 briefing, I will let you know at an appropriate time in the
13 proceedings, and I look forward to hearing Mr. Parker.

14 MR. COLE: Thank you, Your Honor.

15 JUDGE SIPPEL: Now, we have some -- we have some
16 last minute changes to Reading Exhibits 2 and 18. Do you
17 want to just -- now, how do you want to deal with those, Mr.
18 Hutton? Do you want to just wait until we get to those in
19 the course of moving them in?

20 MR. HUTTON: I think that's probably the best way
21 to do it.

22 JUDGE SIPPEL: You don't have any objection to
23 that, Mr. Bechtel or Mr. Cole?

24 MR. COLE: That's fine.

25 JUDGE SIPPEL: Everybody has received copies of

1 those changes.

2 All right, does anybody else have any more
3 preliminary matters?

4 MR. HUTTON: Let me just raise one thing.

5 JUDGE SIPPEL: Go ahead.

6 MR. HUTTON: And that is, our first exhibit is
7 sponsored by John Lundin of du Treil, Lundin & Rackley. He
8 lives and works in Sarasota, Florida. He's an engineer who
9 prepared a comparative-areas-of-populations showing, and
10 he's been called for cross-examination by Adams and by the
11 Bureau.

12 I would ask that his cross-examination take place
13 telephonically rather than having him come here, given that
14 he's a technical expert rather than a principal of the
15 company.

16 JUDGE SIPPEL: Well, the rule says that the only
17 way that that can be done is if there is no objection from
18 any party.

19 Is there any objection?

20 MR. BECHTEL: If it please the Court, we didn't
21 notice him for cross-examination.

22 MR. HUTTON: Oh, I stand corrected.

23 MR. SHOOK: Your Honor, I have no objection. I do
24 have a suggestion though. Given that we have competing
25 engineering exhibits, it again seems to me that there is

1 some real possibility of the two proponents of those
2 exhibits finding common ground and perhaps being able to
3 stipulate, with respect to the comparative coverage
4 differences that are provided by the licensee, as it is
5 presently licensed to operate, by Adams, as it proposes to
6 operate, and then the only real remaining question is what
7 to do with the proposal that exists with respect to Reading
8 in terms of the construction permit that it has but
9 apparently has been unable to build.

10 JUDGE SIPPEL: Well, those are all interesting
11 questions. Has the Bureau had an in-house expert look at
12 these proposals, these coverage representations?

13 MR. SHOOK: Your Honor, I have looked at many of
14 these over time. I don't want to hold myself out as an
15 expert because I am not an engineer.

16 (Laughter.)

17 However, it does seem to me that there is no
18 substantial difference in terms of what Reading's exhibit
19 shows and what Adams's exhibit shows with respect to
20 Reading's present coverage and Adams's proposed coverage.
21 Therefore it does seem to me that, at least with respect to
22 those two matters, it's very capable of stipulation should
23 the two sides care to go down that road.

24 Otherwise, I will have to engage a Bureau engineer
25 to verify what's there, and be able to at least have an

1 intelligent basis for cross-examination when that happens.

2 JUDGE SIPPEL: All right. Well, why don't we just
3 leave that open for the time being, and then I'm going to
4 ask counsel for both sides to have their -- you know, bring
5 this question up certainly to your respective engineers and
6 see if maybe they could get together, the engineers could
7 get together on the telephone and move in the direction that
8 Mr. Shook is suggesting.

9 This was commonly done, I know, back in the old
10 days of comparative cases, that frequently --

11 MR. SHOOK: There would be a joint engineering
12 exhibit.

13 JUDGE SIPPEL: Yes, that's correct.

14 MR. BECHTEL: Judge, I think that might work. Our
15 engineer has reviewed their engineering and finds that it's
16 satisfactory, and so -- and these are two very fine
17 engineering firms, so my suspicion is that a joint exhibit
18 could be worked out.

19 JUDGE SIPPEL: All right. Well, that's very good,
20 Mr. Shook. Let's just leave that item open then for the
21 time being, but I'll leave it up to Mr. Shook to monitor it,
22 and if there's any -- you know, if there's any need to get
23 back to me on it, please do. Otherwise, a joint exhibit
24 could come in, you know, at the closing stages of this
25 phase.

1 MR. HUTTON: That's fine.

2 JUDGE SIPPEL: All right, but if you do need to
3 take a deposition of the engineer, there being no objection
4 from Adams's counsel and no objection from you, we'll do it
5 by telephone. But I don't think that's going to be
6 necessary in light of what I'm hearing, Mr. Hutton.

7 MR. HUTTON: That's fine.

8 JUDGE SIPPEL: All right, then, why don't we take
9 a -- it's 10 minutes of 11. Why don't we just take a 10-
10 minute break and we'll start at 11:00 and we'll start moving
11 these documents in.

12 (Whereupon a recess was taken.)

13 JUDGE SIPPEL: Let's go back on the record.

14 Mr. Cole, I know Mr. -- you don't have all counsel
15 present, but I think we can get started on the mechanics of
16 having these exhibits marked.

17 MR. COLE: I have no problem with marking them,
18 Your Honor, although I hasten to note that my primary role
19 here is to shepherd the Adams's exhibits through and Mr.
20 Bechtel's role has been to worry about the Reading exhibits.
21 So if we get into actual offers and discussions about that,
22 I would prefer to have Mr. Bechtel here, but I fully
23 anticipate he will materialize --

24 JUDGE SIPPEL: I'm sure that will happen.

25 MR. COLE: -- by the time we get the logistics of

1 marking done.

2 JUDGE SIPPEL: Right. All right, Mr. Hutton, you
3 may proceed, sir.

4 MR. HUTTON: Thank you.

5 Reading Exhibit 1 is entitled "Technical Statement
6 Prepared on Behalf of Reading Broadcasting, Inc." It is
7 sponsored by John A. Lundin. It consists of four pages of
8 text, followed by figures 1 through 6, which are one page a
9 piece.

10 JUDGE SIPPEL: I'm going to ask the reporter to
11 identify that document. Do you want the cover letter from
12 Holland & Knight part of the exhibit?

13 MR. HUTTON: I don't see that.

14 JUDGE SIPPEL: I'm sorry. I'm sorry. Forget what
15 I just said.

16 MR. HUTTON: Okay.

17 JUDGE SIPPEL: Do you have that exhibit before
18 you, Madam Reporter?

19 THE COURT REPORTER: Yes.

20 JUDGE SIPPEL: Let's mark that then as Reading
21 Exhibit No. 1.

22 (The document referred to was
23 marked for identification as
24 Reading Exhibit No. 1.)

25 JUDGE SIPPEL: Let me go off the record for just a

1 minute.

2 (Discussion off the record.)

3 JUDGE SIPPEL: Just to make the record clear, it
4 appears that there was a cover sheet from the du Treil firm
5 to Mr. Hutton that was not intended to be part of the
6 exhibit, and Mr. Hutton has -- with my authority and my
7 having seen the document, he has removed that.

8 The exhibit is now being marked as Reading Exhibit
9 No. 1 for identification.

10 Is there any objection to it coming in, Mr.
11 Bechtel?

12 MR. BECHTEL: None, sir.

13 JUDGE SIPPEL: Then Reading No. 1 for
14 identification is received in evidence.

15 MR. SHOOK: Your Honor, I do have --

16 JUDGE SIPPEL: I'm sorry. Yes, go ahead. Go
17 ahead.

18 MR. SHOOK: It's not a substantive objection, Your
19 Honor. It's simply to note that with respect to this
20 exhibit and with respect to a number of other exhibits which
21 are proposed to be submitted by Reading, they are not
22 paginated. Conceivably it's going to present a problem down
23 the line in terms of questioning witnesses and certainly
24 with respect to the preparation of findings if we are not
25 working from a common base of knowledge in terms of what

1 page everybody is looking at when they're referring to
2 something.

3 MR. HUTTON: Actually, Your Honor, this one is
4 paginated up at the top right-hand corner.

5 JUDGE SIPPEL: This one's also --

6 MR. SHOOK: Excuse me. Excuse me. I'm used to
7 looking in a different place.

8 MR. HUTTON: Yes.

9 JUDGE SIPPEL: This one's okay, but you know,
10 that's something to think about as we go down. I mean,
11 we'll discuss it further, but right now I'm trying to
12 accommodate everybody as best I can to get these documents
13 into evidence as rapidly and as efficiently as we can. But
14 you have a good point.

15 All right, then Exhibit No. 1, Reading Exhibit 1,
16 the technical statement, has been marked, identified, and it
17 is now received into evidence as Reading No. 1.

18 (The document referred to,
19 previously identified as
20 Reading Exhibit No. 1, was
21 received in evidence.)

22 JUDGE SIPPEL: Your next exhibit?

23 MR. HUTTON: Our next exhibit is entitled "Local
24 Residents and Civic Activities." It is an eight-page
25 exhibit, including the supporting declaration of Frank D.

1 McCracken.

2 JUDGE SIPPEL: Okay, the reporter will mark --

3 MR. HUTTON: Now, Your Honor, I want to note,
4 yesterday we exchanged some substitute pages. Those have
5 been provided to counsel. I'd like to provide those to you
6 at this time for insertion in your copy.

7 JUDGE SIPPEL: Thank you.

8 Does the reporter have an up-to-date version?

9 MR. HUTTON: Mr. Sifers says yes.

10 JUDGE SIPPEL: Well, you can mark this then as
11 Reading Exhibit 2 for identification.

12 (The document referred to was
13 marked for identification as
14 Reading Exhibit No. 2.)

15 JUDGE SIPPEL: Any objection?

16 MR. BECHTEL: I have no objection, sir.

17 JUDGE SIPPEL: All right, then Reading 2 is
18 received into evidence, and I've got the confirmation that
19 the reporter has the updated version of Exhibit 2.

20 (The document referred to,
21 previously identified as
22 Reading Exhibit No. 2, was
23 received in evidence.)

24 JUDGE SIPPEL: That takes us to Exhibit 3. Do you
25 want to identify that document, Mr. Hutton, please?

1 MR. HUTTON: Yes, sir. Exhibit 3 is entitled
2 "Past Broadcast Experience." It consists of four pages of
3 text, including the supporting declaration of Michael
4 Parker.

5 JUDGE SIPPEL: Okay, the reporter will mark that
6 as your proposed Exhibit No. 3.

7 (The document referred to was
8 marked for identification as
9 Reading Exhibit No. 3.)

10 JUDGE SIPPEL: Is there any objection to receiving
11 it?

12 MR. BECHTEL: None, sir.

13 JUDGE SIPPEL: Then Exhibit 3 for identification
14 is now in evidence as Exhibit 3.

15 (The document referred to,
16 previously identified as
17 Reading Exhibit No. 3, was
18 received in evidence.)

19 MR. HUTTON: I'd also like to note, Your Honor,
20 that we are providing you with a signed declaration at this
21 time.

22 JUDGE SIPPEL: Thank you. And that takes us then
23 to Reading Exhibit 4.

24 MR. HUTTON: Reading Exhibit 4 is entitled
25 "Diversification of Media Outlets." It is a three-page

1 exhibit containing text, and that includes the declaration
2 of Michael Parker.

3 JUDGE SIPPEL: All right, the reporter will so
4 mark that document as Reading Exhibit No. 4 for
5 identification.

6 (The document referred to was
7 marked for identification as
8 Reading Exhibit No. 4.)

9 JUDGE SIPPEL: Any objection?

10 MR. BECHTEL: None, sir.

11 JUDGE SIPPEL: Then it's received in evidence at
12 this time as Reading Exhibit 4.

13 (The document referred to,
14 previously identified as
15 Reading Exhibit No. 4, was
16 received into evidence.)

17 MR. HUTTON: And I'd also like note at this time,
18 we are giving you a signed declaration page for that
19 exhibit.

20 JUDGE SIPPEL: I have it. That's for my copy, but
21 the reporter already has that.

22 MR. HUTTON: Yes.

23 JUDGE SIPPEL: And your next one, Exhibit 5.

24 MR. HUTTON: Our Exhibit 5 is entitled "Testimony
25 of Michael L. Parker," and that consists of three pages of

1 text followed by an Appendix A, which is four pages of text,
2 and then a supporting declaration of Michael Parker.

3 JUDGE SIPPEL: That will be marked as Exhibit No.
4 5 for identification. It's the testimony of Michael Parker.

5 (The document referred to was
6 marked for identification as
7 Reading Exhibit No. 5.)

8 JUDGE SIPPEL: Is there any objection to receiving
9 that at this time?

10 MR. BECHTEL: Yes, sir.

11 JUDGE SIPPEL: All right, let me get -- let me --
12 tell me the page and let's get to it.

13 MR. BECHTEL: Page 2, the last paragraph after the
14 first sentence starting with, "The following is a
15 calculation of the value of the station's public service
16 announcements" -- based on a certain hourly or certain
17 minute rate and then the dollar figures are tabulated
18 through the end of that page. I object to that for two
19 grounds.

20 Number one, public service announcements are by
21 definition a noncommercial announcement, and that's one
22 objection. And the second objection -- and I know people
23 like to -- NAB and others like to attach dollar figures with
24 -- it is true that the value of an unsold spot or the value
25 of an unsold hotel room or the value of an unsold seat on a

1 plane is a very small percentage of the value of when that's
2 sold on the market, and there is some indication, and
3 perhaps we can develop this on cross-examination, that this
4 station wasn't selling very many commercials and they had a
5 heck of a lot of room for nonprofit, noncommercial public
6 service announcements.

7 And so accordingly, for those two reasons I don't
8 think that it is relevant or material to the issues in this
9 case for them to tabulate a dollar value for their
10 noncommercial public service announcements.

11 JUDGE SIPPEL: Mr. Hutton?

12 MR. HUTTON: Yes. This type of analysis is
13 common, as Mr. Bechtel has conceded, and it appears in
14 various Commission rulemaking proceedings, and it is
15 relevant because it does show that even though the station
16 was losing money, the station did devote a substantial
17 amount of time, which is worth a substantial amount of
18 money, to public service efforts.

19 And if Mr. Bechtel wants to cross-examine and find
20 out if the \$5.00 per minute rate is reasonable or not, he
21 can do that. That goes to the weight, but not to the
22 admissibility.

23 JUDGE SIPPEL: All right, I'm going to overrule
24 the objection primarily because of the reasons you've
25 stated, Mr. Hutton. The witness will be on the stand and if

1 he's off the mark with respect to his evaluations, I'm sure
2 that that will probably come out.

3 MR. COLE: I have no other objection.

4 JUDGE SIPPEL: Thank you. And Exhibit 5, which
5 has been marked for identification as testimony of Michael
6 Parker, is in evidence, subject, of course, to Mr. Parker's
7 being here to be cross-examined with respect to it.

8 (The document referred to,
9 previously identified as
10 Reading Exhibit No. 5, was
11 received in evidence.)

12 JUDGE SIPPEL: Your next exhibit?

13 MR. HUTTON: Our next exhibit is Exhibit 6,
14 entitled "Testimony of George Alan Mattmiller, Jr." It
15 consists of eight pages of text plus a one-page supporting
16 declaration.

17 JUDGE SIPPEL: And what is the purpose of this
18 testimony?

19 MR. HUTTON: This goes to the station's
20 ascertainment efforts, Your Honor.

21 JUDGE SIPPEL: All right, the reporter will mark
22 that as Reading Exhibit No. 6 for identification.

23 (The document referred to was
24 marked for identification as
25 Reading Exhibit No. 6.)

1 JUDGE SIPPEL: Is there any objection to receiving
2 this into evidence?

3 MR. BECHTEL: Yes, sir. On page 3, paragraph
4 five.

5 JUDGE SIPPEL: Just a minute.

6 MR. BECHTEL: Starting about six lines down, over
7 in the right-hand side there is a sentence which begins,
8 "Then, in 1996," continuing on to the balance of that
9 paragraph.

10 JUDGE SIPPEL: Down to the word "today"?

11 MR. BECHTEL: "Today," correct, and the
12 ascertainment activities in 1996 are irrelevant and
13 immaterial to the issues in this case.

14 JUDGE SIPPEL: Mr. Hutton?

15 MR. HUTTON: Yes, sir. This, I think, is
16 consistent with your ruling that background information,
17 even outside the license term, can be relevant. What Mr.
18 Mattmiller is showing here is that the station, prior to the
19 passage of the Cable Act, did not enjoy the level of cable
20 coverage, and therefore the level of financial success, that
21 it did after the passage of the Cable Act.

22 And the Cable Act passed in '92. The license
23 terminated in '94. But even after that, the station
24 continued to enjoy greater success in obtaining cable
25 carriage.

1 Consistent with your prior ruling about background
2 information, I think it ought to be admitted. And then
3 during cross-examination you can determine what weight, if
4 any, to give that information.

5 JUDGE SIPPEL: This is kind of in the nature of
6 "afterground" information, isn't it, as opposed to
7 background?

8 (Laughter.)

9 MR. HUTTON: Well, I don't know how you would want
10 to term it, but I think it's accurate --

11 JUDGE SIPPEL: It's in the other direction.

12 MR. HUTTON: It's accurate to call it background.

13 JUDGE SIPPEL: Mr. Shook?

14 MR. SHOOK: Your Honor, I don't see much here that
15 is going to be of any help in deciding the issues in this
16 case, that being the section that Mr. Bechtel has pointed
17 to.

18 JUDGE SIPPEL: I'm going to -- I don't find this
19 to be background as I had treated the last situation or as
20 I've -- to the extent that I have offered any definition of
21 it in this case. I'm going to sustain the objection and
22 strike that language starting in the middle of paragraph
23 five with the words, "Then, in 1996," all the way down to
24 the end of that paragraph. That's stricken.

25 All right, any other objections, sir?

1 MR. BECHTEL: Page 5, paragraph nine, the third
2 line -- fourth line from the bottom refers to a number,
3 which he does not give, as being impressive. I do not
4 object to that. I just call it to your attention. I assume
5 if the Judge finds whatever the record shows is impressive,
6 the Judge will say it's impressive. And if the Judge
7 doesn't, he'll say it isn't.

8 I do have an objection, however, on page 6,
9 paragraph 12. We're down -- oh, seven or eight lines from
10 the bottom, there is a sentence which begins, "My discovery
11 of the *In Voice* newspaper led to the involvement at the
12 station by Mr. Ron Rouse, editor and publisher, who began
13 hosting and producing the long-running series, *Minority*
14 *Voices*" -- for which, given the difficulties in finding some
15 of the pages in those books, I have prepared a packet.

16 JUDGE SIPPEL: Okay, thank you. Mr. Bechtel is
17 handing me a document which is titled "Aid to Understanding
18 Objections to Mr. Mattmiller's testimony regarding *Minority*
19 *Voices*." And a copy is being handed to Mr. Hutton and to
20 Mr. Shook.

21 I take it that the significance of -- the point of
22 the objection here being that it's -- "*Minority Voices*" is
23 outside the -- the reference to "*Minority Voices*" is outside
24 the term. It's outside the license term.

25 MR. BECHTEL: That is correct.

1 JUDGE SIPPEL: Mr. Hutton?

2 MR. HUTTON: It's correct to say that the first
3 broadcast of the program began outside the license term.
4 However, programs don't just spring up out of thin air.
5 There is a substantial amount of planning and preparation
6 work that began for that program prior to the license term,
7 and I'm happy to have Mr. Bechtel establish the point on
8 cross-examination of Mr. Mattmiller that the airing of the
9 program began after the end of the license term, but I think
10 we do deserve some credit for doing the planning and
11 preparation for that program during the license term.

12 JUDGE SIPPEL: "...who began hosting and producing
13 the long-running series, Minority Voices." Could that be
14 changed to "who participated in the preparation..."?

15 MR. HUTTON: We could do that.

16 JUDGE SIPPEL: Mr. Shook, what is your view on
17 this?

18 MR. SHOOK: If the parties can agree that Mr.
19 Rouse's involvement at any point during the license term was
20 simply preparing to put together a program, that would be
21 fine. I'm not sure the parties are willing to come to any
22 such stipulation though.

23 JUDGE SIPPEL: I wouldn't ask for a stipulation on
24 this. I'm simply saying that would the Bureau object to
25 receiving evidence of the fact that Mr. Rouse participated

1 in preparing that program during the -- that he participated
2 in the preparation during the renewal period?

3 MR. SHOOK: Your Honor, I'm really in no position
4 to comment on that. I have no idea when Mr. Rouse --

5 JUDGE SIPPEL: Well, that's what he would testify
6 to. We're just talking about the relevancy. Whether he's
7 telling the truth or not is not a factor here so much.

8 MR. SHOOK: Assuming that he did begin preparation
9 during the license term, I would go along with it being
10 relevant.

11 JUDGE SIPPEL: All right. Mr. Bechtel or Mr.
12 Cole -- Mr. Bechtel?

13 MR. BECHTEL: Well, it seems a reach for them to
14 go back and -- more than some two months before their first
15 airing of a program and reach back even further behind that
16 and say, well, they were talking about it or something like
17 that. He's already got in the preceding sentence that he
18 read the newspaper and that was part of his ascertainment.

19 Mr. Rouse, in my opinion, and he did testify, is
20 not a very credible witness. For example, he remembered
21 eight-minute programs a long time before, and they didn't
22 have no eight-minute programs a long time before. So he's
23 not going to help, although you are going to have his --
24 you're going to have his deposition testimony, and I brought
25 some with me if you want to read it now, and you can try to

1 figure out what he's saying.

2 So I just think that it's much ado about nothing,
3 and it's -- it's a problem that we run into, and you're
4 going to see it when you get into some of those magnificent
5 books over there, where they come to the -- they come to the
6 very edge and instead of being kind of responsible and
7 trying to cut it and saying, "Here, we found this stuff in
8 our logs and that's over the edge, so let's put it away,"
9 and "We found this in the" -- see the third quarter of 1994
10 is July, August and September. So every single time in the
11 transcripts of the public witnesses, you're going to run
12 into this, and you're going to run into it in those books.

13 They would put the whole third quarter in, and
14 then there's a lot of stuff in there which is July, and
15 that's perfectly legitimate, and there is a lot of stuff in
16 there in September and October, and the responsible
17 preparation of these exhibits and these materials would have
18 been to be courteous to the Judge and to delineate it, but
19 they didn't do that.

20 So you're going to have to do that or we're going
21 to have to sit and argue over things like this. And from my
22 perspective, this is about the last argument I'm going to
23 have here because I'm going to just point you to the
24 notebooks where that stuff is and leave it to you in your
25 wisdom to sort through and ignore what you want to ignore

1 and read what you want to read.

2 As far as I'm concerned, I don't care what you do
3 with this. It's so -- it's so immaterial it's not worth the
4 time we've already spent on it.

5 JUDGE SIPPEL: Well, okay, that's a very forceful
6 argument. But what I'm trying to do here is I'm trying to
7 permit, as I will with Adams, I'm trying to permit Reading
8 to present its case as it sees fit, subject, of course, to
9 specific rulings with respect to relevance or anything else
10 that doesn't belong in the record.

11 So all of these are -- you're absolutely right --
12 all of these are judgment calls, and to the extent that, you
13 know, we are creeping to the edge of a -- and there's
14 overlap with respect to the end of that period, that's going
15 to impact on how I deal with it. And it's not going to --
16 and I don't think it's -- it's not going to do it in a
17 positive way.

18 So let me tell you what I'm going to do so that we
19 can move on from this. I'm going to change that line in
20 there, when it says, "...who began hosting and producing the
21 long-running series, Minority Voices," I'm going to change
22 that to "...who participated in the preparation of the
23 series, Minority Voices." I'm going to leave "long-running"
24 in there too.

25 Now, is the reporter able to follow that?

1 THE COURT REPORTER: Yes.

2 JUDGE SIPPEL: Great. All right. I'm not testing
3 you, I just wanted to make sure. I'm moving a little bit
4 fast here.

5 Okay. Now, are there other objections with
6 respect to that exhibit?

7 MR. BECHTEL: Yes, sir, page 7, paragraph 14,
8 opening sentence. Mr. Mattmiller says that, "WTVE has
9 always placed a heavy emphasis on children's programming."

10 Well, all these charts that they have prepared
11 during this time frame don't show that, and I don't know how
12 we deal with this. Maybe I will just have to cross-examine
13 him and determine his definition of "always placing a heavy
14 emphasis." It's just -- this is the kind of verbiage that
15 slips into these written direct cases that ought to be taken
16 out. And so I think, as a purist, I would say take the
17 whole sentence out.

18 JUDGE SIPPEL: Mr. Hutton?

19 MR. HUTTON: Well, it does contain a rhetorical
20 flourish that may not be borne out by the charts.

21 JUDGE SIPPEL: Rhetorical flourish under oath? I
22 mean, what are we talking about?

23 MR. HUTTON: Well, it says, "...has always placed
24 a heavy emphasis," and I think it's fair to say that the
25 station placed a heavy emphasis on children's programming

1 from the time that the Children's Television Act was passed.

2 MR. BECHTEL: I'll stipulate to that. That's when
3 it started.

4 JUDGE SIPPEL: All right. So give me that
5 language again.

6 MR. HUTTON: Strike "always," strike "especially
7 in light of mandates resulting," and after the word "from"
8 insert "the time of passage" -- the words "the time of."

9 JUDGE SIPPEL: You have no problem with that, Mr.
10 Bechtel?

11 MR. BECHTEL: No, I have no problem with that.

12 JUDGE SIPPEL: All right.

13 Your witness just got saved from perhaps a very
14 embarrassing moment.

15 MR. HUTTON: I understand.

16 JUDGE SIPPEL: Okay. Go ahead. Anything more,
17 Mr. Bechtel?

18 MR. BECHTEL: No, sir.

19 JUDGE SIPPEL: All right, then, subject to those
20 changes, this has been marked for identification as Reading
21 Exhibit 6. It's now received into evidence as Reading
22 Exhibit 6, the testimony of George Mattmiller.

23 (The document referred to,
24 previously identified as
25 Reading Exhibit No. 6, was

1 received into evidence.)

2 JUDGE SIPPEL: Next exhibit?

3 MR. HUTTON: The next exhibit is Exhibit 7. It is
4 entitled, "Testimony of David Kase." It consists of two
5 pages of text, including a supporting declaration.

6 JUDGE SIPPEL: Okay, the reporter will mark that
7 as your Exhibit No. 7, Reading Exhibit No. 7.

8 (The document referred to was
9 marked for identification as
10 Reading Exhibit No. 7.)

11 MR. BECHTEL: No objection, sir.

12 JUDGE SIPPEL: There being no objection, it's
13 received in evidence at this time.

14 I'm sorry, Mr. Shook?

15 MR. SHOOK: No objection.

16 JUDGE SIPPEL: Any objection?

17 MR. SHOOK: No. Your Honor, if you don't hear
18 from me on these, I'm not objecting.

19 JUDGE SIPPEL: Okay, thank you.

20 Exhibit 7 is received, and that's the testimony of
21 David Kase, or is it Case?

22 MR. HUTTON: Kase.

23 (The document referred to,
24 previously identified as
25 Reading Exhibit No. 7, was

1 received in evidence.)

2 JUDGE SIPPEL: The next one, proposed testimony of
3 Kimberley Bradley, that's Exhibit 8 for identification?

4 MR. HUTTON: That is Exhibit 8, and it consists of
5 10 pages of text, followed by -- well, 11 pages, including a
6 supporting declaration, and it includes numerous appendices
7 that I think we should handle one by one.

8 JUDGE SIPPEL: All right. That's the way I'm
9 going to want to handle them.

10 Let's just start with her testimony, without the
11 exhibits or without the attachments. And I have been handed
12 a signed declaration. As that document appears, do you have
13 any objections to it, Mr. Bechtel?

14 MR. BECHTEL: No, except to those that -- to some
15 of the information on the last part of the text will change
16 depending on what happens with the appendices. Other than
17 that, we have no objection.

18 JUDGE SIPPEL: Then subject to those
19 qualifications, Exhibit 8, that is, the testimony, the pure
20 testimony of Ms. Bradley is received in evidence. She will
21 be available, of course, for cross-examination.

22 MR. HUTTON: She will, yes.

23 (The document referred to was
24 marked for identification as
25 Reading Exhibit No. 8 and

1 received in evidence.)

2 MR. HUTTON: I would also like to note that there
3 are corrected pages that we are providing to you, corrected
4 pages 9 and 10, and those have already been provided to the
5 reporter and to the other parties.

6 JUDGE SIPPEL: Okay. Thank you.

7 All right, that takes care of your first volume of
8 exhibits. What comes next? Appendices to Exhibit 8 is the
9 next volume. Is that correct?

10 MR. HUTTON: Yes, starting with Appendix A.

11 JUDGE SIPPEL: The reporter has that too?

12 MR. HUTTON: The next volume is Volume II, which
13 we are providing to the reporter.

14 JUDGE SIPPEL: All right, let's hold up just a
15 minute now until the reporter gets up to speed with us.

16 Do you have the volume now?

17 THE COURT REPORTER: Yes.

18 JUDGE SIPPEL: All right, what do you want to
19 direct us to then, Mr. Hutton?

20 MR. HUTTON: Exhibit A is entitled -- or Appendix
21 A, excuse me, Appendix A is entitled "Spreadsheets with
22 Compiled Data From WTVE's Quarterly Issues/Programs Report,"
23 and it consists of a cover page followed by 21 pages of text
24 and then followed by a one-page summary that is a supporting
25 declaration.